

CONSTITUTIONAL CONVENTION

The Constitutional Convention which many are now calling for in the name of tax revolt, would be a kind of populist smorgasbord. "Eat as much as you like, no extra cost."

There would initially be the question of a constitutional amendment to generally prohibit any federal budget deficit. But there has long been interest also in a constitutional amendment to permit prayers in the public schools. In the current evangelical climate, such tampering with the First Amendment would invite other efforts to Constitutionally Christianize America.

There has also been much interest in a constitutional amendment to deal with abortion. But as long as a Constitutional Convention were being held, people would arrive with all kinds of pet notions. Not only would there be proposals for "adjusting" the Bill of Rights, but also a desire to turn some of our lesser statutes into Constitutional law. Affirmative action, civil service tenure, gun control, foreign aid, public smoking: they would all be grist for the mill.

There is no certain way to restrict a Constitutional Convention to one or more given subjects. Article V of the Constitution says only that the States can "call a convention for proposing amendments." When such a convention is gathered, it becomes a supreme power in itself, beyond the reach of legislatures, courts or Presidents. Even beyond the reach of legislative intent.

Such a Constitutional Convention would indeed be an ultimate exercise in the "populism" of our time. Populism is defined as the movement towards more *direct* control of government by the citizenry, bypassing the intervening mechanisms of government. Our founding fathers were as afraid of such populism as they were of

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the monarchy. They were afraid of whim-of-the-moment government by the majority. James Madison and Alexander Hamilton wrote a number of essays as Publius, including this paragraph:

"Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such co-existent passion or interest, must be rendered unable to concert and carry into effect schemes of oppression."

Populism is an enemy of pluralism. Populism -- unlike pluralism -- generally insists on uniformity: the uniform standards of the majority, even if those standards change. Populism is also a bridge to totalitarianism: uniform standards, but fixed instead of fluid -- now outside the reach of even the majority. In the modern world, cynical politicians have always deliberately manipulated populism in order to acquire power.

Opposition to excessive populism in general, and constitutional conventions in particular, should be high on the American Jewish agenda as a matter of self-interest. Such opposition should be high on the agenda of any discerning minority group; or of anyone interested in the maintenance of democratic pluralism.

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Now some state legislatures have passed bills calling for either a constitutional amendment or a Constitutional Convention to mandate a federally balanced budget, except in "emergency." The substance of this issue is itself debatable. If it is a serious mandate, it could be disastrous. One Governor commented that if there had been such a prohibition of federal deficit, we might never have become involved in Vietnam. Does that mean that we might not have been able to help England and France fight the Nazis before Pearl Harbor? Or that we might not have been able to help Israel repel the invasion of the Yom Kippur War?

But it is also likely that the whole idea is a con game, the kind of con game which politicians often play with the populist temper. Everything imaginable could be defined as an "emergency." In addition, many ways can be found to spend taxpayers' money outside the formal "budget." This kind of blind prohibition is no substitute for the necessity that legislators examine programs more carefully, and spend less wastefully.

But whether the idea of a frozen budget cap is a good one or not, the willingness of the State legislatures to so cavalierly consider the Constitutional Convention for that purpose, seems a wanton abdication of leadership. But, then, that is what populism is all about.

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